

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PLASMA PHYSICS CORPORATION and
SOLAR PHYSICS CORPORATION,

Plaintiffs,

MEMORANDUM AND ORDER

-against-

CV 08-1628 (Wexler, J.)

CHI MEI OPTOELECTRONICS CORP. and
CHI MEI OPTOELECTRONICS USA INC.,

Defendants.

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Wexler, District Judge

Plaintiffs Plasma Physics Corporation and Solar Physics Corporation (collectively, “Plasma”) bring this patent infringement action against defendants Chi Mei Optoelectronics Corp. and Chi Mei Optoelectronics USA Inc. (collectively, “CMO”). CMO moves to dismiss the action as barred under res judicata, the Kessler doctrine, and the patent exhaustion doctrine based on a Stipulation and Order entered by this Court in Applied Materials, Inc. v. Plasma Physics Corp., CV 00-2199 (E.D.N.Y. April 30, 2002) (the “Applied Litigation”). Plasma opposes the motion.

In opposing the motion, Plasma contends, inter alia, that CMO fails to mention in its motion that CMO uses different equipment than was at issue in the Applied Litigation to perform its infringing processes. In other words, Plasma argues that CMO uses equipment from companies who are not in privity with Applied. In reply, CMO counters that Plasma’s infringement claims are based solely on CMO’s use of equipment purchased from the subsidiary through which Applied sold its equipment, Applied Komatsu Technologies (“AKT”), citing Complaint ¶¶ 12, 13. Based on Plasma’s contention, CMO requests that the Court convert the

motion to one for partial summary judgment barring Plasma from asserting its patents against products manufactured using AKT equipment, thereby allowing introduction of matter outside the pleadings.

Given CMO's request, and the fact that this action is nearing the end of pretrial proceedings, the Court denies the motion to dismiss without prejudice to renewal as a motion for summary judgment.

SO ORDERED.

/s/ _____
LEONARD D. WEXLER
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York
September 30, 2009